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STATE AND LOCAL REGULATION IN PENNSYLVANIA

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We are at present passing through an age of social revolution. The general public is demanding better civic conditions, better form of government, better class of men in public office, better returns for the public money and better and more efficient regulation of public utilities.

In response to this general demand our form of government is undergoing a gradual change. Municipal government by commission is supplanting government by the old double barreled councilmanic form. As this form of government of cities has grown very popular, it has been adapted to meet other conditions that have arisen. As a result, in various states we have what is known as the public service commission, public utilities commission, or a commission of synonymous name. The idea of commission government was to centralize and concentrate the duties and power and to fix the responsibility of conducting municipal affairs upon a few men elected at large by the people, whereby more efficient service would be obtained by reason of their being in closer touch with the people on account of the regulations governing and controlling such commissions.

Here in Pennsylvania, today, we have commission government in all the cities of the second and third class; and we also have a state public service commission. I am a firm believer in the principles of commission government when properly regulated, and think that they can well be applied to other functions of our government. But while the aim of commission government is to centralize and concentrate power and authority, the pendulum can be made to swing too far in that direction and the matter over done. That has been the case in Pennsylvania. The powers of the Pennsylvania state public service commission, as they are at present constituted, are too broad and sweeping and too autocratic to be allowed to exist in a free and sovereign state. Quoting from the title of the act, creating and establishing this commission: "and to a limited extent

regulating municipal corporations engaged or about to engage in the business of public service companies," the vastness of its power becomes readily apparent. Municipal corporations have certain natural and constitutional rights that cannot be infringed upon or restricted. Under their corporate powers, cities of the third class in this state are granted certain inherent rights, among which is: "the making of contracts and the doing of all other acts in relation to the property and affairs of the city necessary to the exercise of its corporate and administrative power." To show you that an attempt has been made to infringe upon and restrict the inherent and constitutional rights of municipalities, I will enumerate a few of the powers of the Pennsylvania state public service commission, wherein they conflict with those of a municipality:

The state public service commission must first give its consent before any municipality can acquire, construct or operate its electric light plant, water plant, gas plant, heating plant or any other public utility.

The state public service commission has the right to fix the rates that shall be charged for the service of any public utility operated by a municipality and can also compel it to adopt, use and keep, in conducting its business, such form, method, system or systems of accounts, records and memoranda as the commission shall prescribe.

The state public service commission must first approve contracts between municipalities and public utilities before they can become valid and no grant or franchise of a municipality to a public utility can become operative without the approval of the commission.

The state public service commission has the power to change or abolish any grade crossing within the city without the consent of the municipality, and can assess the entire cost occasioned by such change to the city.

The state public service commission has the power to change the grade of the street occupied by a railway or street railroad and assess the municipality with the cost of said change.

The state public service commission has the exclusive right in saying whether or not a city shall extend any road or street across the tracks of a railway or railroad corporation.

The state public service commission must first grant its consent or its "Certificate of Public Convenience" before many matters of an urgent and local nature can proceed.

The power of the state public service commission in all of the above instances is absolute and the only appeal from any of its rulings is to the court of common pleas of Dauphin County, at Harrisburg, where everybody must go and where the appellant must not only, as a condition precedent, pay all costs of preparing the

record, but must fight for the local rights, the public service company and the public service commission with all their counsel. Furthermore, in case of an appeal no evidence is considered except that which was taken before the commission and the Dauphin County court can only affirm, or reverse, and in the event of reversal, send the case back to the commission for reconsideration.

The Pennsylvania state public service commission, being appointed by the governor, is answerable to no one for its actions. Why, then, should this appointive commission be given the power and authority over the elected representatives of municipalities regarding the exercising of home rights which properly belong to the municipalities themselves? Is it not reasonable to believe that men elected locally by the people are better able to interpret local conditions and the intent of the people than appointed men unacquainted with local surroundings? I wish it to be clearly understood that I have no grievance against the individual members of the public service commission, for I hold each and every one of these men in high regard and have supreme confidence in their character, integrity and honesty of purpose. It is with the principle of this law that I find fault. The vast power and authority conferred by this act upon a few men are a blow to the cardinal and fundamental principles of democratic government. It is the entering wedge to deprive the people of that great principle for which our forefathers fought: the right to govern themselves. Men are but human and not divine and at sometime or other are liable to have their fair judgment prejudiced by sentiment, friendship or other circumstances. The members of the public service commission are not responsible for the act creating that body and they must do their duty and enforce the law as they find it. I do not believe that the commission would intentionally use this vast power at their command to the detriment of the municipalities of our state, but no necessity existed for conferring the same upon them and the act should be very materially modified. With this end in view, the several cities, boroughs and towns of this state have organized "The Municipal Home Rule League of Pennsylvania," having in view the following objects:

First. To effect the amendment or repeal of the public service company law and such other laws or parts of laws as affect the inherent and constitutional rights of municipalities and the people in their self-government.

Second. To frame and cause to be enacted such laws as may be necessary

to restore to the municipalities and the people their inherent and constitutional rights.

Third. To guard constantly the rights of municipalities and the people at large against the encroachment of power by unscrupulous public service corporations or by individuals in the enactment of unjust laws; and in general to protect the people of the great state of Pennsylvania in their civic and economic rights and interests.

You will agree with me, gentlemen, I am sure, that these principles for which this league stands are founded on good common sense and are only those to which the people are justly entitled. This league is now at work gathering data and drawing up laws embodying the principles that it stands for, and which it will attempt to have enacted at the next session of the legislature. I feel confident that the old adage, "Right is might and in the end shall prevail," will again be verified.

Not only is the present public service commission act of this state wrong in the instances just enumerated but it is impossible to carry out its requirements in an efficient manner. The method of procedure that is prescribed and must be followed in all the dealings with the commission is nothing but a mass of red tape that makes delays and inconvenience the rule and not the exception. This is but the natural outcome of the broad scope of the power of the commission. The large amount of work, trivial, detail work, that it is required to pass upon because of this broad power, takes up its time to the exclusion of almost everything else. As a result, with a limited clerical force, there must be long, protracted delays often resulting in great expense and inconvenience until the matter can be reached in the regular routine. I have in mind several instances in which the inconvenience and delay resulting from complying with the requirements and red tape prescribed by such regulation are aptly illustrated.

In one case a municipality decided to install a telephone exchange in its city hall because of the more efficient service that would result therefrom. The officials of the telephone company were called in and the needs and wants of the city explained to them. After some discussion an agreement was reached. Before the matter of installing the telephone exchange could proceed, however, application for a hearing before the public service commission had to be made, a petition for a certificate of public convenience had to be prepared, the substance of the contract, the names of the

contracting parties and date when the commission would be asked to approve the contract had to be advertised in the daily newspapers, and after the hearing the pleasure of the commission awaited until the certificate of public convenience be issued. Until this certificate is received all work must be held in abeyance. This matter has been in suspense before that body for several months and in all likelihood, from present indications, several more months will elapse before the certificate of public convenience is issued and the exchange installed.

In another instance a telephone company owned a pole on which was carried its wires and also the wires of another public service company. Events transpiring which made the ownership of the pole by the telephone company unnecessary, the telephone company decided to sell or give it to the other public service company. The transaction involved at the most a cost of not more than \$10 but it being a matter between two public service companies it was found that it would be necessary to first obtain the sanction of the public service commission, which would then issue its certificate of public convenience, before the matter could proceed. The amount of the expense involved in drawing up the plans showing the location of the pole, the wires thereon, in advertising, and in going to and from Harrisburg to take the matter up with the commission greatly exceeded the amount of money involved in the transaction.

Again, the matter of building a certain railway was being considered and the necessary capital, about \$90,000, had been paid in by the prospective incorporators of the company. Then, as it was first necessary to obtain the approval of the public service commission before the company could be incorporated, the money was placed on deposit in a trust company until said approval would be obtained and the matter of incorporating proceed. The delay occasioned by the method of procedure stated in the above cases held the matter up for several months. Finally, no action being taken, the parties interested became exasperated at the delay, took up their money and invested in some other enterprise and the matter of providing street railway transportation in that section of the country and which would have proven a decided benefit thereto, was dropped.

These are convincing examples of the red tape encountered,

delays and inconvenience met with and benefits lost through the operation of the present law. On the other hand were the public service commission to enforce all present regulation requirements with the object of getting quicker action, it would take an army of clerks, special investigators and the like. The expense that would be entailed would be great and would result in placing an unjust burden upon the people in the form of direct or indirect taxation to meet it, and the results achieved would be of little practical value to anyone.

We need regulation of public utilities but the regulation should be along simple and sane lines. Under the present act, it is provided that before any public utility company can do business in a locality where another public utility is engaged in the same business, application must be made to the public service commission for a certificate of public convenience and that, "the commission shall find or determine that the granting of approval of such application is necessary and proper for the service, accommodation, convenience or safety of the public." Recent interpretations of this provision, by the public service commission, practically assure every public utility company that it is safe from competition, and so long as the law remains in its present state, they need have no fear of competition in the future. Such conditions breed arrogance, rudeness and indifference on the part of the public utility company towards the public, as it has a virtual monopoly on its product in that locality and is not amenable to the local residents for its conduct. To allow such conditions to exist within a state is in direct contravention with the policy of the federal government in its dealings with national monopolies. The federal government, recognizing the fact that competition is vital to the business and prosperity of the country, and that monopoly produces stagnation of trade and commerce, brought suits against the trusts that were exercising monopolies and were successful in dissolving them, thereby giving to trade the stimulus that is always the result of competition. If this is a national policy, why should it not be a state policy? Competition means courtesy, due consideration of the public's needs, and acts as an incentive to produce the very best at the lowest cost and it should be encouraged to the utmost.

The public, being obsessed with the idea that public utilities are the cause of all public ills, has made these companies the subject

of special investigations, special taxes and special laws. Legislating against them has become a fad and like all fads has been carried too far. Within the past ten years this has been especially true. During this time there has been placed on the statute books of this and other states, one after the other huge cumbersome laws, bristling with legal and technical terms and phraseologies. These laws were all designed to regulate the operation of public utilities and the author of each claimed that his law would be the cure-all for all problems arising between the public service companies and the public, solving all such problems in a fair, just and equitable manner. The fallacy of these claims has been proven in every instance. Their legislation was based upon what had occurred in the past and failed to make provisions for the constantly changing conditions and viewpoints, which are continually arising and changing the method of operation of public utilities. Moreover, it is an impossibility to frame a law to allow for these constantly and continually changing viewpoints and conditions. The present laws have signally failed to accomplish the result desired and on the other hand have occasioned a great deal of inconvenience and delay. This is because, among other things, they attempt to pass on the honest acts of all corporations, which are of a goodly number and which the public service companies are perfectly willing that they should pass upon, whereas if the public service company does not wish to have the public service commission pass upon certain of its actions, it simply ignores the commission, and the ferreting out of every such case is practically impossible. In this way the aim and intent of the law prescribing such regulation are frequently frustrated. Regulation of this kind does not regulate.

It is possible to run a furnace without a draft check or regulator but if you desire to get the most efficient results from your furnace and your fuel, you will install a check or regulator. The regulator, however, must not be so cumbersome a thing as to make the running of the furnace an expensive luxury devoid of any economical results. It must be a simple device that will not interfere with the practical running of the furnace. So it is with public utility companies. They could be operated without any regulation whatever but if the public desires to get the most beneficial results from such public service companies, they must be regulated, but the regulation dare not be a cumbersome thing that is going to

interfere with the ready operation of the company or endanger the user's benefits, but must be a simple thing that will not retard or restrict the every day routine of the company or be a burden on the public.

Public utilities are here for a purpose. That purpose is to supply the great wants of the whole people and toward that end they should be operated in the interests of the public welfare. From past experience, we know that the public has not always been fair to the public utility company, nor has the company always been fair to the public. The spirit of retaliation has often been present and on many occasions has been allowed to befuddle and becloud the real issues that were under consideration. This whole question should be considered in a fair-minded way, keeping in mind the viewpoints of both the investor and the public. The investor in the stock of a public utility must remember that the grants and franchises for the use of public property which the company has received from the people are of inestimable value; but he should also be assured that the safety of the enterprise in which he invests is not to be endangered by drastic legislation which would affect the value of his investment; and the whole body of investors, constituting the public service corporation, which is enjoying a municipal grant or franchise, should keep in mind the fact that the public is at all times entitled to receive fair and just treatment at their hands, whether there is a specific law covering the case or not. When the public service company loses sight of this fact and attempts to evade the measure by hiding behind its legal rights, the public becomes aroused and demands redress with the result that laws are often passed which are more severe than there was any necessity for but which bears evidence to that "get-even" spirit that is entirely too prevalent among us. The public in its turn must remember that the public service company also looks to them for just and fair treatment and that while there may be difference of opinion at times, hasty action should be avoided and the matter left to be settled in the light of cold, unbiased reason.

Our laws are made by our representatives, who are elected to represent all the people. They legislate to cover existing conditions according to their knowledge, which is often meagre on such a great question as this one. This is due to a lack of abundant and correct information on the subject and no matter how honest their

intentions may be they are frequently swayed by friendship, politics or the seeming popularity of the measure, which atmosphere is often created by the ever ready one side, and the legislator unthinkingly permits himself to be placed in the position of a medium between the people and the corporation, instead of being the direct representative of the whole people. It is in this way that many errors creep into our laws and they become the cause of much unpleasantness until finally stricken out or corrected by subsequent legislation. This condition could be corrected by having the public throw off that lethargy—indifference—which seems to have enveloped it in regard to public affairs, take a greater interest in the public welfare and keep in closer touch with its representatives. We should always endeavor to elect men of character, integrity and forcefulness who would have the keen foresightedness to discriminate in favor of the right and would not allow themselves to be influenced by anything except their duty to the public.

When the people become awakened to existing conditions, we can then hope for more efficient, more sane and more simple laws. Why, the most striking feature, resulting from laws of regulation of public utilities to which I have referred so repeatedly, outside of its inefficiency, is its frightful cost. I am informed that there was spent by public service commissions of the several states during the past year the amazing sum of \$40,000,000, all of which was paid out of the funds in the public treasuries and which was derived from direct taxation of the people. In addition the people were made to pay indirectly many more millions of dollars by reason of over charges, poor quality of service and in other numerous ways applied by the companies to reimburse themselves for the cost incurred in carrying out the exactions of the commissions. The total cost of this direct and indirect taxation, which must in the end be paid for entirely by the consumer is simply enormous. Do you marvel that the public is awakening and demanding that laws of regulation that do not regulate but only result in great cost, inefficiency, delay and inconvenience, be corrected? I tell you, gentlemen, that the time has come when the people will insist that an entire revision, correction and adaptability of the laws in all their phases be made. As one method of correction in the regulation of public utilities, I would suggest that public service companies be regulated along the capital, rates and service lines.

They should not be allowed to capitalize for a greater amount than that actually invested in the business; their rates of service should be fixed upon a sliding scale basis, and should be established on the cost of the necessary operating expenses plus a fair return on the money invested; their service should be of a standardized, uniform quality, from which they should not be allowed to deviate; their dividends and surplus should not be allowed to be increased without the public participating jointly in the prosperity of the company. This could be done in the following manner: The company should be required to reduce the rate of the standardized, uniform quality of service to the public a certain amount for every per cent added to the dividend or for every stated amount placed to the surplus account. Under this plan, known as the London plan, the company would have no incentive for breaking or evading the laws for the purpose of increasing its dividends, as the only way in which dividends or surplus could be increased would be as previously stated. The desire to earn and pay large dividends has been the cause of more evasion of laws on the part of public service companies and corporations than any other one thing, but under this plan there would be no necessity for their so doing. Instead the company would be kept on the alert to adopt all improved ways by which their product could be furnished at the lowest possible cost, thereby increasing the gains of the company in which both the stockholders and the public would share, thus benefiting both. The public service company would not be harassed by a multiplicity of laws retarding and interfering with its method of operation; the investor in the securities of the company would receive a fair return on his money, with a lessening of the element of risk in connection with his investment; and the public would be saved the huge sums now spent for inefficient regulation besides being assured of a uniform standardized quality of service, the cost of which would be reduced, according to the prosperity of the public utility company.

The day when valuable municipal franchises are to be secured without the city receiving an adequate return therefor is past, as the enormous returns that have accrued to the original investors in the first public utility companies have disillusionized the public as to these persons being actuated by a spirit of public philanthropy. A broader public vision now prevails and the jingling dollars of today can no longer dull the acute hearing of the people to the

host of future possibilities in which the investor and the public should be joint participants.

What is eminently desired by everybody is a plain, common sense situation, devoid of red tape, easy of interpretation, with theory and practise combined in a practical way and everything dovetailing and working together smoothly and harmoniously for the production of the most efficient and beneficial results that are capable of being achieved for the good of the public welfare.

The London plan of which I have just spoken would go a great way to produce this result and I would favor its adoption and trial here.

I am of the firm conviction that the present method of regulation of public utilities in this state will be corrected by the next legislature and the defects existing in the public service commission act repealed.

In an earnest effort to serve in the best and most satisfactory way the public needs, the public utility companies should intensively cultivate that friendly feeling which brings confidence, and then with a mutual recognition of each other's rights and purposes there will appear on the horizon the dawn of a day of better things for all concerned in the public welfare.